

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL NO. 3:07CV254-H**

ALLSTATE INSURANCE COMPANY,)
))
Plaintiff,))
v.))
UNITED STATES OF AMERICA,))
Defendant.))
))
))

**ORDER DISMISSING ACTION WITHOUT PREJUDICE FOR FAILURE
TO EXHAUST ADMINISTRATIVE REMEDIES**

THIS MATTER is before the Court on the Defendant's Motion to Dismiss (document #7) filed September 7, 2007. As set forth in Defendant's Motion, the Plaintiff failed to exhaust its administrative remedies; the Court, therefore, lacks subject matter jurisdiction in this case; and this matter must be dismissed without prejudice. See 18 U.S.C.A. § 2675(a).

The Plaintiff has not responded formally to the Defendant's Motion. Moreover, Plaintiff's counsel has informed chambers' staff telephonically that the Plaintiff concedes that this matter must be dismissed and does not oppose the Defendant's Motion.

The parties have consented to Magistrate Judge jurisdiction under 28 U.S.C. § 636(c), and this Motion is now ripe for the Court's determination.

NOW, THEREFORE, IT IS ORDERED:

1. The Defendant's "Motion to Dismiss" (document #7) is **GRANTED** and this matter is **DISMISSED WITHOUT PREJUDICE**.
2. The Clerk is directed to send copies of this Order to counsel for the parties.

SO ORDERED, ADJUDGED AND DECREED.

Signed: November 26, 2007

Carl Horn, III

Carl Horn, III
United States Magistrate Judge

